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HUBAH SDN BHD & ORS

v.

KOPERASI PUSAKA (PENAMPANG) BHD

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COURT OF APPEAL, PUTRAJAYA
RAMLY ALI JCA
AZHAR MA'AH JCA
ABDUL AZIZ ABDUL RAHIM JCA
[CIVIL APPEAL NO: S-02-465-11-2011]

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14 MAY 2012

UNINCORPORATED ASSOCIATION: *Societies - Co-operative society - Land transaction - Bona fide purchasers - Failure to obtain approval of members in general meeting - Whether board of co-operative*

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society authorised to develop lands and enter into joint ventures - Whether third parties concerned with indoor management of co-operative society - Whether transaction entered for benefit of co-operative society - Whether matters raised could be determined under O. 14A Rules of Court 2012 - Co-operative Societies Act 1993, s. 36

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The respondent ('Koperasi') was registered under the Sabah Co-operative Societies Ordinance 1958 and owned five lots of land. The resolution of the Koperasi's Annual General Meeting authorised the Koperasi's board to take suitable steps to develop

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all the lands owned by it. At a meeting of the Koperasi's board, the board accepted the first appellant's ('Hubah') joint venture proposal and entered into agreements with Hubah in relation to the Koperasi's land. In respect of the second appellant's ('Konkamaju') transaction, the Koperasi, at its special general

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meeting, had accepted the proposed joint venture with the third appellant in relation to the Koperasi's land. The Koperasi consented to the third appellant assigning its rights and liabilities under the joint venture agreement to Konkamaju. In 2001, the Koperasi entered into a sale and purchase agreement with

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Konkamaju. Somewhere in 2008 and 2009, the Koperasi wrote to Hubah and Konkamaju to terminate the transactions entered between them and the Koperasi. Hence, suits were filed by the appellants to challenge the termination. On the other hand, the Koperasi filed an action to have those transactions as null and

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void. The learned High Court Judge dismissed the appellants' suits and granted the Koperasi reliefs of declarations in respect of an application under O. 14A of the Rules of Court 2012 ('ROC'). It

was decided, *inter alia*, that the transactions between the appellants and the Koperasi, in relation to the lands in question, were void for illegality since the Koperasi's board had acted without authority of its members in the general meeting. Dissatisfied, the appellants appealed to this court and their case rested on the following grounds, *ie*, (i) the finding that there was no approval by the Koperasi in the general meeting was contrary to the unchallenged documentary evidence before the court; and (ii) that outsiders and innocent third parties which dealt with the Koperasi's board at arm's length were not concerned with matters pertaining to the indoor management of the Koperasi.

Held (allowing appeal with costs)
Per Ramly Ali JCA delivering the judgment of the court:

(1) The Koperasi's by-law 8(3) did not require the terms of any agreement to be approved by the Koperasi in a general meeting. All that by-law 8(3) requires was for the board to prepare a suitable schedule of activities for approval by the members at the general meeting. Further, s. 36 of the Co-operative Societies Act 1993 merely declares that, subject to the Act and the by-law, the ultimate authority of a co-operative society shall vest in the general meeting of its members. On the facts, the ultimate authority of the Koperasi did in fact authorise its board to develop all the lands of the Koperasi and to enter into joint ventures for that purpose. (para 13)

(2) Based on the documentary evidence as well as the related resolutions of the Koperasi members in general meetings, the transactions with Hubah and Konkamaju were *intra vires*. Hence, the learned judge's findings on this issue was against the weight of the evidence. (para 14)

(3) The appellants as the third parties dealing with the Koperasi, was not concerned with matters in relation to the indoor management of the Koperasi. This was in line with the rule in *Royal British Bank v. Turquand* ('the *Turquand* rule'). It is an established law that the *Turquand* rule protects outsiders dealing with the entity in good faith who are entitled to assume that acts within the constitution and powers of the entity had been properly performed and are not bound to inquire whether the acts of internal management have been regular. (para 15)

(4) The appellants as the third parties entering into *bona fide* commercial agreements with the Koperasi were entitled to assume that all matters of indoor management that were required to be done were done. The transactions had been entered into for the benefit of the Koperasi. The agreements had been duly discharged by performance and the Koperasi had obtained all its entitlements under the various agreements. Hence, all those agreements were valid and the Koperasi was bound by them. (para 17)

(5) The determination of the issues as to whether, *inter alia*, the transactions in question required approval of the members of the Koperasi in the general meeting under the Koperasi's by-law 8(3) and s. 36 of the Co-operative Societies Act 1993, could be determined under O. 14A of the ROC without having to go for full trial of the matter. The documents, in the form of the relevant resolutions of the members' general meeting and the relevant provisions of the law and the by-law were sufficient for such determination. On the facts, the determination of the issues posed was in favour of the appellants and judgment was thus entered in favour of them based on their respective claims against the Koperasi. (paras 19 & 20)

Bahasa Malaysia *Translation Of Headnotes*

Responden ('Koperasi') telah didaftarkan di bawah Ordinan Koperasi Sabah 1958 dan memiliki lima lot tanah. Resolusi Mesyuarat Agung Tahunan telah membenarkan lembaga Koperasi mengambil langkah-langkah yang sewajarnya untuk membangunkan tanah-tanah yang dimilikinya. Semasa mesyuarat lembaga Koperasi, lembaga tersebut telah menerima cadangan usahasama bersama dengan perayu pertama ('Hubah') dan memasuki perjanjian-perjanjian dengan Hubah berkaitan dengan tanah Koperasi. Berkenaan transaksi perayu kedua ('Konkamaju'), Koperasi, semasa mesyuarat tahunan khasnya telah menerima cadangan usahasama dengan perayu ketiga berkenaan tanah Koperasi. Koperasi menyetujui penyerahan hak dan liabiliti pihak ketiga di bawah perjanjian usahasama kepada Konkamaju. Pada tahun 2001, Koperasi telah memasuki satu perjanjian jual beli dengan Konkamaju. Kira-kira pada tahun 2008 dan 2009, Koperasi telah memaklumkan kepada Hubah dan Konkamaju supaya membatalkan transaksi yang dimasuki di antara mereka dan Koperasi. Oleh itu,

tindakan-tindakan telah difailkan oleh pihak perayu untuk mencabar pembatalan tersebut. Sebaliknya, Koperasi telah memfailkan satu tindakan supaya transaksi tersebut diisytiharkan tidak sah dan terbatal. Yang arif Hakim Mahkamah Tinggi telah menolak tindakan perayu-perayu dan membenarkan relif deklarasi yang dipohon oleh Koperasi berkenaan permohonan di bawah A. 14A Kaedah-Kaedah Mahkamah 2012 ('KM 2012'). Ia telah diputuskan, antara lain, bahawa transaksi antara perayu-perayu dan Koperasi berkaitan dengan tanah tersebut adalah terbatal kerana menyalahi undang-undang memandangkan lembaga Koperasi telah bertindak tanpa kebenaran ahli-ahlinya dalam mesyuarat tahunan. Tidak berpuas hati, perayu-perayu telah merayu ke mahkamah ini dan kes mereka diasaskan atas alasan-alasan berikut, iaitu (i) penemuan bahawa tiada kelulusan Koperasi dalam mesyuarat tahunan adalah bertentangan dengan keterangan dokumentar yang tidak dipertikaikan di mahkamah; dan (ii) bahawa orang luar dan pihak ketiga yang tidak bersalah yang berurusan secara tulus dengan lembaga Koperasi tidak perlu mengendahkan hal ehwal pengurusan dalaman Koperasi.

Diputuskan (membenarkan rayuan dengan kos)
Oleh Ramly Ali HMR menyampaikan penghakiman mahkamah:

(1) Undang-undang kecil Koperasi 8(3) tidak memerlukan terma-terma mana-mana perjanjian diluluskan oleh Koperasi dalam mesyuarat tahunan. Undang-undang kecil 8(3) hanya memperuntukkan bahawa lembaga menyediakan jadual aktiviti yang sesuai untuk kelulusan ahli-ahli dalam mesyuarat tahunan. Tambahan, s. 36 Akta Koperasi 1993 hanya memperuntukkan bahawa kuasa mutlak sesuatu koperasi terletak dalam mesyuarat tahunan ahli-ahlinya, tertakluk kepada Akta dan undang-undang kecil. Berdasarkan fakta, kuasa mutlak Koperasi sememangnya membenarkan lembaganya membangunkan kesemua tanah-tanah Koperasi dan memasuki perniagaan usahasama bagi kehendak itu.

(2) Berdasarkan kepada keterangan dokumentar bersama-sama dengan resolusi berkenaan ahli-ahli Koperasi semasa mesyuarat tahunan, transaksi dengan Hubah dan Konkamaju adalah *intra vires*. Oleh itu, dapatan yang arif hakim atas isu ini adalah bertentangan dengan beban keterangan.

(3) Perayu-perayu sebagai pihak ketiga yang berurusan dengan Koperasi tidak mempunyai kaitan dengan perkara-perkara berkenaan pengurusan dalaman Koperasi. Ini adalah selaras dengan peraturan dalam *Royal British Bank v. Turquand* ('peraturan *Turquand*'). Adalah undang-undang matan bahawa peraturan *Turquand* melindungi orang-orang luar yang berurusan dengan syarikat dengan suci hati yang berhak membuat andaian bahawa tindakan-tindakan dalam rangkuman perlembagaan dan kuasa-kuasa syarikat telah dilaksanakan secara teratur dan tidak perlu disiasat sama ada tindakan-tindakan pengurusan dalaman adalah sebenarnya teratur.

(4) Perayu-perayu sebagai pihak ketiga yang memasuki perjanjian komersil *bona fide* dengan Koperasi layak menganggap bahawa semua perkara-perkara pengurusan dalaman yang sepatutnya dilakukan telah pun disempurnakan. Transaksi-transaksi tersebut telah dimasuki untuk faedah Koperasi. Perjanjian-perjanjian telah disempurnakan melalui pelaksanaan dan Koperasi telah memperolehi kesemua haknya di bawah pelbagai perjanjian. Oleh itu, perjanjian-perjanjian tersebut adalah sah dan Koperasi terikat dengannya.

(5) Penentuan isu-isu berkenaan sama ada, antara lain, transaksi yang dipersoalkan memerlukan kelulusan ahli-ahli Koperasi dalam mesyuarat tahunan di bawah undang-undang kecil Koperasi 8(3) dan s. 36 Akta Koperasi 1993 boleh ditentukan di bawah A. 14A KM 2012 tanpa perbicaraan penuh perkara ini. Dokumen-dokumen, dalam bentuk resolusi relevan mesyuarat tahunan ahli-ahli dan peruntukan undang-undang dan undang-undang kecil yang relevan adalah mencukupi untuk penentuan sebegitu. Berdasarkan fakta, penentuan isu yang dinyatakan adalah memihak kepada perayu-perayu dan dengan itu, penghakiman dimasukkan bagi pihak mereka berdasarkan tuntutan masing-masing terhadap Koperasi.

Case(s) referred to:

Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd [2007] 6 CLJ 741 CA ***(refd)***

Mahfuz Hashim v. Koperasi Pekebun Kecil Daerah Segamat; Rashid Omar & Anor (Third Party) [2004] 8 CLJ 402 HC ***(refd)***

Pekan Nenas Industries Sdn Bhd v. Ching Chuen Chang & Ors [1998] 1 CLJ 793 FC ***(refd)***

Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal [2003] 4 CLJ 337 CA ***(refd)***

Royal British Bank v. Turquand [1856] 119 ER 886 ***(foll)***

Legislation referred to:
Co-operative Societies Act 1993, ss. 13, 36
Rules of Court 2012, O. 14A r. 2

For the appellants - Colin Lau (Chung Juin Dau with him); M/s Chung & Assocs
For the respondent - David Fung Yin Kee (Amli Nohin with him); M/s Chau & Thien

[Editor's note: For the High Court judgment, please see Hubah Sdn Bhd v. Koperasi Pusaka (Penampang) Bhd & Another Case [2010] 1 LNS 1217.]

Reported by Kumitha Abd Majid

JUDGMENT

Ramly Ali JCA:

[1] The present appeal concerns the following six civil suits, namely:

(i) Suit 172 of 2008 (Suit 172);

(ii) Suit 142 of 2009 (Suit 142);

(iii) Suit 163 of 2009 (Suit 163);

(iv) Suit 145 of 2009 (Suit 145);

(v) Suit 161 of 2009 (Suit 161); and

(vi) Suit 203 of 2009 (Suit 203).

[2] For Suit 172, Suit 163, Suit 161 and Suit 203, the respective plaintiffs, namely Hubah Sdn Bhd ('Hubah') and Konkamaju Sdn Bhd ('Konkamaju') were to enforce several transactions that had been entered into between each of them and Koperasi Pusaka (Penampang) Berhad ('Koperasi'). The Koperasi on the other hand through Suit 140, Suit 145 and Suit 161 were to have those very transactions declared null and void.

[3] The learned High Court Judge found for the Koperasi and granted the relief sought. His Lordship also held that the several suits by the Koperasi were not barred by limitation. Although all the six actions were tried in the court below, there are facts that are common to them all.

Common Facts

[4] The Koperasi, which was registered on 20 March 1972 under the Sabah Co-operative Societies Ordinance 1958 owned five lots of land held under CL 215326766, CL 215326784, CL 215326800, CL 215326793 and CL 215326775. On 21 April 1984 it held its AGM. The resolution of the said AGM authorised the Koperasi's board to take suitable steps to develop all the lands owned by the Koperasi. On 16 July 1985, the Registrar of Co-operative Sabah was notified of the mandate given in the resolution to the board of the Koperasi to deal with the lands in question. The said mandate was confirmed and reinforced by the Koperasi *vide* it's another AGM resolution dated 18 December 1988.

[5] At the Koperasi's general meeting held on 5 April 1992 its members had authorised its board to enter into joint ventures to develop all its lands. This authorisation was repeatedly briefed by the chairman to all members of the Koperasi at two separate special general meetings of the Koperasi held on 28 February 1993 and 7 March 1993.

[6] On 24 August 2002 at a meeting of the Koperasi's board, the board accepted Hubah's joint venture proposal in respect of land held under CL 215310688 subject to Hubah agreeing to give RM1.8 million worth of condominiums to be developed at Riverside Plaza, Kingfisher Park in exchange together with rental compensation.

[7] Acting pursuant to the authority vested in it by the various resolutions referred to earlier, the Koperasi did the following:

(a) on 18 January 1999, it granted a power of attorney to Hubah in respect of land CL 215404247 which empowered Hubah to do several acts including to sublease the land in question;

(b) on 23 February 1999, it entered into two agreements with Hubah for the sale or exchange of one acre of land held under CL 215404247 with one unit of double storey light industrial building with Hubah; and to sell to Hubah the land held CL 215404247 in exchange for one unit of shop house (Lot 53) in Bandar Baru Penampang; and this transaction was fully executed when Hubah handed vacant possession of the said Lot 53 to the Koperasi;

(c) On 28 March 2000 the Koperasi transferred CL 215404247 to Hubah; and the memorandum of transfer was duly executed for the Koperasi by its chairman, secretary and treasurer and it was duly registered in Hubah's favour on 5 October 2000;

(d) On 20 September 2002, the Koperasi and Hubah entered into a sale and purchase agreement for the sale of the land CL 215310688 for a sum of RM1.8 million in exchange for units of condominiums to be built at the Riverside Plaza, Kingfisher Park whereby Hubah agreed to compensate the Koperasi with a monthly rental of RM4,000 until the condominiums were transferred to it. The Koperasi agreed to remove the squatters occupying the land; on the same date the Koperasi granted a power of attorney to Hubah authorising Hubah to deal with the land CL 215310688;

(e) from July 2003 to July 2007, the Koperasi had received from Hubah the agreed monthly rental compensation payments without any protest; in all the Koperasi was paid RM184,000 by Hubah. However after the Koperasi's board was re-constituted in 2007, it refused to accept any payment from Hubah;

(f) in respect of Konkamaju's transaction the Koperasi at its special general meeting on 22 May 1994 had unanimously accepted the proposed joint venture with Aggasf in respect of the lands held under CL 215326800 and CL 215326775. The said transaction was approved by the Registrar of Co-operative Societies *vide* its letter dated 16 November 1994. An agreement to that effect and a power of attorney were executed on 3 December 1994 signed by eight directors of the Koperasi on behalf of the Koperasi;

(g) the Koperasi consented to Aggasf assigning its rights and liabilities under the joint venture agreement to Konkamaju; and the assignment is dated 22 November 2000;

(h) the Koperasi entered into a sale and purchase agreement on 9 July 2001 with Konkamaju for the transfer of four units of commercial buildings in Kingfisher Park to the Koperasi in exchange for the Koperasi transferring the lands CL 215326800, and CL 215326775 to Konkamaju;

(i) the Koperasi took delivery of the four Kingfisher units from Konkamaju on 1 March 2004 and as agreed, leased it back to Konkamaju at the rentals of RM3,000 per month per unit for eight years. The Koperasi had enjoyed the payments from 1 July 2004 until 2007;

(j) on 2 May 1992, the Koperasi entered into another joint venture to develop three parcels of lands including the land held under CL 215326784 known as Bandar Baru Penampang. The first phase of the said project was completed on 25 September 1998 and occupational certificate was issued for the commercial buildings; and the Koperasi had received all its entitlement from the first phase of the development. On 8 September 2004, Konkamaju's architect submitted the development plan for the reminder of the project to Majlis Daerah Penampang, but to-date no approval has been obtained.

[8] On 26 August 2008 and 5 February 2009 the Koperasi wrote letters to terminate the transactions with Hubah. Hubah refused to accept the termination and filed suits to have the termination declared void. The same notices of termination were also issued by the Koperasi to Konkamaju to terminate their respective transactions. Konkamaju then filed its action to challenge the termination.

[9] The learned High Court Judge dismissed the appellants' suits and granted the respondent (the Koperasi) reliefs of declarations in respect of an application under O. 14A of the Rules of Court 2012 (previously known as the Rules of the High Court 1980) and his final judgment and consequential orders given on 21 January 2011. In coming to his decision, the learned judge made two principal findings, namely that the transactions between the appellants and the respondent in relation to the five pieces of land in question were void for illegality based on the ground that the Koperasi's board had acted without authority of its members in general meeting. The learned judge had also made a finding that the Koperasi's claim is not barred by limitation because the Sabah Limitation Ordinance does not apply to void transactions.

[10] The appellants were dissatisfied with the above findings and rulings of the learned judge. The appellants further complained that the learned judge had failed to deal with the main questions framed under O. 14A; and he had also granted the Koperasi relief never claimed by them. Hence the present appeal before us.

[11] The appellants' case rest on the following grounds (*inter alia*) namely:

(a) that the finding that there was no approval by the Koperasi in general meeting is contrary to the unchallenged documentary evidence before the court; and

(b) that as outsiders and innocent third parties dealing with the Koperasi's board at arm's length, they were not concerned with matters pertaining to the indoor management of the Koperasi.

[12] The respondent contended (and agreed by the learned judge) that s. 36 of the Co-operative Societies Act 1993 and the Koperasi's by-law 8(3) require mandate of the general meeting of members of the Koperasi to be obtained for the said agreements entered into by the Koperasi in respect of all the transactions in question.

[13] Agreed documents were placed before the court for its determination to reflect the true position of the matter. There is evidence to show that approval of the general meeting of the Koperasi was given on 21 April 1984 in broad and general terms and in specific terms on 5 April 1992. In any event, by-law 8(3) which came into force on 3 November 1998 does not require the terms of any agreement to be approved by the Koperasi in general meeting. All that by-law 8(3) requires is for the board to prepare suitable schedule of activities for approval by the members at general meeting. Further s. 36 of the Co-operative Societies Act 1993 merely declares that subject to the Act and the by-law, the ultimate authority of a co-operative society shall vest in the general meeting of its members. In the present case, the ultimate authority of the Koperasi did in fact authorise its board to develop all the lands of the Koperasi and to enter into joint ventures for that purpose.

[14] We are of the view that based on the documentary evidence as well as the related resolutions of the Koperasi members in general meetings, the transactions with Hubah and Konkamaju were *intra vires*. The learned judge's findings on this issue is against the weight of the evidence.

[15] We are also of the view that the appellants as third parties dealing with the Koperasi was not concerned with matters of indoor management of the Koperasi. This is in line with the rule

in *Royal British Bank v. Turquand* [1856] 119 ER 886 (the *Turquand* rule). It is an established law that the *Turquand* rule protects outsiders dealing with the entity (in this case is the Koperasi) in good faith who are entitled to assume that acts within the constitution and powers of the entity have been properly performed and are not bound to inquire whether acts of internal management have been regular (see: Federal Court decision in *Pekan Nenas Industries Sdn Bhd v. Ching Chuen Chang & Ors* [1998] 1 CLJ 793; [1998] 1 MLJ 465).

[16] The *Turquand* rule applies to co-operative societies as demonstrated by the judgment of Jeffrey Tan J (now FCJ) in *Mahfuz Hashim v. Koperasi Pekebun Kecil Daerah Segamat; Rashid Omar & Anor (Third Party)* [2004] 8 CLJ 402. It is also pertinent to note that s. 13 of the Co-operative Societies Act 1993 makes the by-law open for inspection by members only. As such the appellants as third parties would have no means of ascertaining if they had been duly complied with by the Koperasi.

[17] The appellants as third parties entering into *bona fide* commercial agreements with the Koperasi were entitled to assume that all matters of indoor management that were required to be done were done. The transactions had been entered into for the benefit of the Koperasi. The agreements had been duly discharged by performance and the Koperasi had obtained all its entitlements under the various agreements. We are of the view that all those agreements are valid and that the Koperasi was bound by them.

[18] The present case before the High Court had proceeded for summary determination under O. 14A of the Rules of Court 2012 (previously the Rules of the High Court 1980). In a nutshell O. 14A enables the court to determine any question of law or construction of documents where it appears that such question is suitable for determination without having to go for full trial of the matter and such determination will finally determine the entire cause or matter or any claim therein. Rule 2 of the Order enables the court to summarily enter judgment which would finally dispose of the matter. The determination can be done based on undisputed facts or facts which should not have been disputed after considering all the relevant evidence, oral as well as documentary (see: *Dream Property Sdn Bhd v. Atlas Housing Sdn Bhd* [2007] 6 CLJ 741; [2008] 2 MLJ 812 - Court of Appeal; and *Petroleum Nasional Bhd v. Kerajaan Negeri Terengganu & Another Appeal* [2003] 4 CLJ 337; [2004] 1 MLJ 8 - Court of Appeal).

[19] In the present case the determination of the issues as to whether the transactions in question require approval of the members of the Koperasi in general meeting under the Koperasi's by-law 8(3) and s. 36 of the Co-operative Societies Act 1993; and if the answer is in the affirmative, whether there are sufficient documentary evidence to prove that such approval was obtained in the general meeting of the Koperasi; and finally whether as outsiders and innocent third parties dealing with the Koperasi's board at arm's length, they were not concerned with matters pertaining to the indoor management of the Koperasi. All these issues can be determined under O. 14A without having to go for full trial of the matter. The documents, in the form of the relevant resolutions of the members' general meeting, and the relevant provisions of the law and the by-law are sufficient for such determination.

[20] Based on the above considerations we are of the view that the determination of the issues posed should be in favour of the appellants; and judgment can be entered in favour of the appellants based on their respective claims against the respondent (the Koperasi).

[21] The appellants also raised the issue that the respondent's claim was time barred under the Sabah Limitation Ordinance on the ground that the claim was instituted beyond the period of six years after the execution of the agreements which the respondent claimed to be void and invalid. Our view is that, this issue is not really relevant in view of the determination of the earlier two issues which are in favour of the appellants. Even assuming the respondent's claim is not time barred under the Sabah Limitation Ordinance, the determination of the two earlier issues in favour of the appellants are sufficient to determine the matter under O. 14A and to enter judgment in favour of the appellants on their claims.

Conclusion

[22] We therefore allow the appeal with costs of RM100,000 to the appellants (here and below). We set aside the order and decision of the learned judge and we allow the appellants' claims. We also make an order that the deposit be refunded to the appellants.